

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ONLINE DVD RENTAL  
ANTITRUST LITIGATION

No. M 09-2029 PJH

**ORDER RE PLAINTIFFS'  
SECOND MOTION FOR PRELIMINARY  
APPROVAL OF SETTLEMENT WITH  
WAL-MART DEFENDANTS**

This Document Relates to:  
ALL ACTIONS

The second motion of plaintiffs for preliminary approval of the class action settlement with Wal-Mart defendants came on for hearing on August 24, 2011. As stated on the record, plaintiffs' administrative motion to narrow the class period is GRANTED. Doc. no. 320. The court instructed counsel to file, by August 31, 2011, affidavits by the appropriate Wal-Mart executive and Rust Consulting representative concerning the procedures to protect the identity of class members against disclosure to Wal-Mart, as stated on the record. Based on counsel's representations as to those safeguards, Netflix's objections to preliminary approval of the class action settlement are overruled.

The court also instructed class counsel to clarify the opt out provisions of the proposed class notice with respect to the ability to participate in the Wal-Mart settlement and be excluded from the class claims against Netflix. Class counsel must file a revised proposed notice by August 31, 2011.

With respect to distribution of the class notice, the court declines to adopt plaintiffs' proposed distribution plan as set forth in the Wheatman Declaration. The court hereby approves the following plan: direct e-mail notice to all settlement class members, followed by direct notice by standard U.S. mail to members whose e-mails bounce back upon up to

1 three attempts at e-mail delivery. Based on class counsel's representations as to the  
2 inability to track returned or undeliverable notices that are delivered by standard mail, the  
3 court does not require class counsel to report to the court the percentage of notices that  
4 were delivered by U.S. mail prior to proceeding with publication notice. The court hereby  
5 approves the following proposed methods of notice by media: Internet based notice  
6 through banner ads posted on Facebook.com; a press release that will be distributed on  
7 PR Newswire's US1 Newswire; an informational website ([www.onlineDVDclass.com](http://www.onlineDVDclass.com)), which  
8 will provide Class Members with information on the Settlement, including access to the  
9 Settlement Agreement, the Long Form Notice and Claim Form; sponsored links on the  
10 results page of keyword/phrase searches on the Google, Yahoo!, and Bing search engine  
11 pages; a post office box through which Class Members can contact Class Counsel by mail  
12 with any specific requests or questions; and a toll-free information line that Class Members  
13 can call for more information and request copies of the Notice. The court does not approve  
14 publication notice in nationally circulated print magazines or newspapers. Class counsel  
15 must file a revised proposed order that complies with this order by August 31, 2011.

16 **IT IS SO ORDERED.**

17 Dated: August 29, 2011

  
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PHYLLIS J. HAMILTON  
United States District Judge